

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

File No. 1:04-CR-24

v.

HON. ROBERT HOLMES BELL

PRINCE TERRAL RUSH,

Defendant.

_____ /

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant Prince Teral Rush's motion to invoke alternate sentence. (Dkt. No. 49.) Through this motion Defendant is requesting the Court to amend his judgment of conviction to reflect the alternative sentence stated at the time of sentencing.

On November 19, 2004, Defendant was sentenced to 216 months in prison. In anticipation of the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), and in accordance with the recommendation of the Sixth Circuit in *United States v. Koch*, 193 F. App'x 391 (6th Cir. 2004), this Court included in its judgment an alternative sentence of 180 months, "should the sentence guidelines be deemed unconstitutional." (Dkt. No. 34, J.2 2.) Defendant filed an appeal, but it was dismissed for want of prosecution. (Dkt. No. 42).

Defendant contends that because the Supreme Court determined in *Booker* that the guidelines are advisory rather than mandatory, and because the issue of an alternative sentence has never been reviewed by any court, the Court should amend the judgment to reflect the alternative sentence.

In the absence of an express statute or rule to the contrary, a district court does not have jurisdiction to reconsider or modify a term of imprisonment previously imposed. *United States v. Ross*, 245 F.3d 577, 586 (6th Cir. 2001). Defendant has not identified any statute that would permit the Court to modify the term of his imprisonment under the procedural posture of this case.

Neither has Defendant identified any procedural mechanism for self-enforcement of an alternate sentence. *See United States v. Bradley*, 194 F. App'x 341, 343 n.1 (6th Cir. 2006) (“As the government observes in a footnote to its brief, ‘[w]hile it is clear that the [district court] intended the alternative sentence to be self-enforcing . . . there is no applicable procedural rule for such a situation.’”). Accordingly,

IT IS HEREBY ORDERED that Defendant’s motion to invoke alternative sentence (Dkt. No. 49) is **DENIED**.

Dated: April 28, 2009

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE